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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO RAMOS,

Defendant and Appellant.

D064383

(Super. Ct. No. SCN317271)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy M. Casserly, Judge. Affirmed as modified, with directions.

E. Elliot Adler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

On March 27, 2013, the victim left her parked car unlocked and with the engine running while she went inside an adjacent building. When she came back outside, she saw Adolfo Ramos in the driver's seat of her car, backing out of the parking spot. A short time later, the police found Ramos driving the victim's car.

Ramos waived his right to a jury trial. The court found Ramos guilty of both grand theft of an automobile (Pen. Code, § 487, subd. (d)(1); count 1) and unlawfully driving or taking a vehicle, (Veh. Code, § 10851, subd. (a); count 2) and further found that he had served five prior prison terms (Pen. Code, §§ 667.5, subd. (b), 668). The court dismissed three of the prison priors and sentenced Ramos to five years in jail: the three-year middle term for grand theft of an automobile, a stayed term (Pen. Code, § 654) for unlawfully driving or taking a vehicle, and one year for each of the two remaining prison priors.

Ramos appeals, contending that his conviction for unlawfully driving or taking a vehicle must be reversed because it is a lesser included offense of grand theft of an automobile. Respondent properly concedes the point. A defendant cannot be convicted of grand theft of an automobile and unlawful driving or taking of a vehicle where, as here, both offenses are based on the same act. (*People v. Barrick* (1982) 33 Cal.3d 115, 128.)

DISPOSITION

The judgment is modified by striking the conviction for unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a); count 2). As so modified, the judgment is

affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward the amended abstract of judgment to the San Diego County Sheriff's Department.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.